

UNITED STATES DISTRICT COURT
DISTRICT OF MINNEOSTA

JEROME EUGENE VANN,

CIV. NO. 13-893(SRN/JSM)

Petitioner,

REPORT AND RECOMMENDATION

v.

MICHELLE SMITH,

Warden,

Respondent.

The above matter is before the undersigned on petitioner's Motion to Deny, and Rule for the Petitioner by Default. [Docket No. 16]. This matter was referred to this Court for a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.1.

I. BACKGROUND

On April 30, 2013, this Court issued an Order requiring respondent to file an answer to petitioner's petition for habeas corpus within thirty days. Order [Docket No. 7]. On May 30, 2013, respondent moved for two-week extension of time to file and serve a response. Respondent's Motion for Extension of Time to File Answer [Docket No. 12]. On May 31, 2013, this Court granted respondent's motion and ordered that respondent's response be filed and served by June 14, 2013. Order [Docket No. 15]. On June 5, 2013, petitioner filed the instant motion, asking the Court to deny respondent's Motion for Extension of Time to File Answer "after failing to comply with this court's order of May 30, 2013"¹ and requesting that the Court rule for petitioner by default. Petitioner's Motion to Deny, p. 1 [Docket No. 16]. Petitioner submitted an

¹ The Court assumes petitioner intended to refer to the April 30, 2013 Order.

affidavit in which he stated that respondent failed to file and serve a response by May 30, 2013, therefore, petitioner was entitled to default judgment. Affidavit of Jerome E. Vann in Support of Motion to Deny, p. 1 [Docket No. 17]. Respondent filed her response to the petition on June 13, 2013. [Docket Nos. 19, 20].

In light of the fact that respondent timely filed her response to petitioner's petition, this Court recommends that petitioner's Motion to Deny, and Rule for the Petitioner by Default be denied.

II. RECOMMENDATION

For the reasons set forth above and based on all of the files, records, and proceedings herein, IT IS RECOMMENDED THAT:

Petitioner's Motion to Deny, and Rule for the Petitioner by Default [Docket No. 16] be **DENIED**.

Dated: January 14, 2014

Janie S. Mayeron
JANIE S. MAYERON
United States Magistrate Judge

NOTICE

Under D. Minn. LR 72.2(b) any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties by **January 28, 2014** a writing which specifically identifies those portions of this Report to which objections are made and the basis of those objections. A party may respond to the objecting party's brief within 14 days after service thereof. All briefs filed under this Rule shall be limited to 3500 words. A judge shall make a de novo determination of those portions to which objection is made. This Report and Recommendation does not constitute an order or judgment of the District Court, and it is therefore not appealable directly to the Circuit Court of Appeals.